

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
PACIFIC COAST EVERGREENS, INC.

Appellant,

V.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 86-35

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

THIS MATTER, the appeal of a \$250 civil penalty for a purported unlawful outdoor fire at a place of business in Kitsap County, came on for hearing before the Board on the second of May, 1986 in the afternoon at the Board's hearing room in Lacey, Washington. Seated for and as the Board were: Gayle Rothrock (presiding) and Wick Dufford. Lawrence J. Faulk reviewed the record. The hearing was formal and was duly reported by Lisa Flechtner of Barker and Associates Court Reporters.

Appellant appeared through its owner, Richard Berg. Respondent

1 PSAPCA appeared through its attorney, Keith McGoffin.

2 Witnesses were sworn and testified. Exhibits were admitted and  
3 examined. Argument was heard. From the testimony, evidence, and  
4 contentions of the parties the Board makes these

#### 5 FINDINGS OF FACT

##### 6 I

7 The Puget Sound Air Pollution Control Agency (PSAPCA) is an  
8 activated air pollution control authority under terms of Chapter 70.94  
9 RCW, empowered to adopt and enforce outdoor burning regulations.

10 The agency has filed with the Board copies of its Regulations 1  
11 and 2, and all amendments thereto, of which we take official notice.

##### 12 II

13 Pacific Coast Evergreens, Inc. (PCE), located just south of Port  
14 Orchard, is a family business in operation for over 30 years which  
15 supplies boughs and greens in decorative arrangements to wholesale  
16 florists. Their business, warehouse and surrounding property is  
17 partly on a hillside, easily visible from main thoroughfares south of  
18 town.

##### 19 III

20 On December 23, 1985 the fire marshall and community development  
21 director for Kitsap County noticed a large amount of smoke rising from  
22 the PCE property while he was on routine business driving south on a  
23 thoroughfare outside Port Orchard. He circled back to the PCE  
24 property and noticed one fire in a burn barrel and one 4-foot by  
25 6-foot open fire containing fir boughs and pallets.

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1 Concerned about violations and safety problems he telephoned the  
2 local fire district, took two photos, and made mental notes about the  
3 scene. PCE's owner drove up in a truck and the two men got into a  
4 heated exchange. PCE neither applied for nor received a permit from  
5 PSAPCA to burn the fires in question.

#### 6 IV

7 Announcements were broadcast on the radio, television, and  
8 published in newspapers in the five county area of mid-Puget Sound  
9 regarding an air pollution episode (a stagnation alert) taking place  
10 there in late December, 1985. One of the days of the pollution  
11 episode was the twenty-third of December.

12 Appellant, respondent, and the Kitsap County fire marshall each  
13 recall hearing or otherwise knowing of the particular air stagnation  
14 alert. Appellant, however, mistakenly thought that the alert did not  
15 apply in Kitsap County.

#### 16 V

17 While the fire marshall was on the scene, personnel from the local  
18 fire district arrived at PCE and directed that the fires be  
19 extinguished by the owner's application of dirt and water. PCE's  
20 owner complied.

#### 21 VI

22 PSAPCA inspector reached the fire marshall's office and the scene  
23 on the twenty-fourth to document the fire event. He examined the fire  
24 marshall's report and photographs. After arriving at PCE and engaging  
25 in discussions with the foreman the PSAPCA inspector wrote field

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1 notices of violation, one for burning during a ban and the other for  
2 burning without a permit.

3 VII

4 PSAPCA thereafter issued a formal Notice and Order of Civil  
5 Penalty assessing a fine of \$250 for violation of the State Clean Air  
6 Act and Regulation 1 of PSAPCA. It was received by PCE on February  
7 15, 1986.

8 Subsequently, on February 24, 1986, PCE filed an appeal of the  
9 civil penalty to this Board, and it became our cause number PCHB 86-35.

10 IX

11 PCE has no record of prior violations. However, evidence showed  
12 that PSAPCA's inspector had visited the company earlier, advised its  
13 owner fully of the agency's burning regulations, and provided him with  
14 a copy of them. The County Fire Marshall likewise had provided prior  
15 warnings to PCE regarding county burning restrictions.

16 X

17 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
18 adopted as such.

19 From these Findings of Fact the Board comes to these

20 CONCLUSIONS OF LAW

21 I

22 The Legislature of the State of Washington has enacted the  
23 following policy on outdoor fires:

24 It is the policy of the State to achieve and  
25 maintain high levels of air quality and to this end  
to minimize to the greatest extent reasonably

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1 possible the burning of outdoor fires. Consistent  
2 with this policy, the legislature declares that  
3 such fires should be allowed only on a limited  
basis under strict regulation and close control.  
RCW 70.94.740

4 Pursuant to this and RCW 70.94.775, the respondent PSAPCA adopted  
5 its Regulation I, article 8 governing outdoor fires. It states, in  
6 pertinent part, at Section 8.02:

7 It shall be unlawful for any person to cause or allow any  
8 outdoor fire:

9 . . .

10 (2) during any stage of an air pollution episode . . . , or

11 Appellant's failure to refrain from open burning during an air  
12 pollution episode places PCE in violation of the State Clean Air Act  
13 and Regulation I, Section 8.02 on December 23, 1986.

## 14 II

15 PSAPCA Regulation I, Section 8.05(1) prohibits outdoor burning  
16 (other than land clearing or residential burning) without prior  
17 written approval of the agency. The burning in question meets the  
18 definition of neither land clearing nor residential burning.  
19 Regulation I, Sections 1.07(y) and 1.07(pp). Therefore, the lack of a  
20 permit violated Section 8.05(1).

## 21 III

22 Under our State's policy of limited outdoor burning, it is not  
23 safe to assume site remodeling and office materials may be  
24 indiscriminantly disposed of by open burning. Before igniting such  
25 fires it is the responsibility of businesses and citizens to become

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1 aware of and adhere to air pollution control laws and codes. The  
2 violations committed by appellant PCE are clear and should be affirmed  
3 in the amount of penalty cited.

4 III

5 Any Finding of Fact which deemed a Conclusion of Law is hereby  
6 adopted as such.

7 From these Conclusions of Law the Board enters this  
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ORDER


Notice and Order of Civil Penalty #6410 is affirmed.

DONE this 6TH day of June, 1986.

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE ROTHROCK, Vice-Chairman

 6/5/86  
LAWRENCE J. FAULK, Chairman

  
WICK DUFFORD, Lawyer Member

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